

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ANTHONY M. KISSLING & SUZANNE R.)	
KISSLING,)	
)	
Petitioner(s),)	CZ
)	
v.)	Docket No. 19857-10.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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)	

ORDER

This valuation case was on the Court's November 14, 2011 trial calendar for Buffalo, New York but is now set for trial at a special session in August. Respondent moved on July 1, 2015 for leave to file an amendment to his answer to assert a gross valuation-misstatement penalty under IRC § 6662(h). Tax Court Rule 41(a) provides that when more than 30 days have passed after an answer has been served, "a party may amend a pleading only by leave of Court or by written consent of the adverse party, and leave shall be give freely when justice so requires."

Whether a party may amend its answer lies within the sound discretion of the Court. *Quick v. Commissioner*, 110 T.C. 172, 178 (1998) (citations omitted). In determining the justice of allowing a proposed amendment, the Court must examine the particular circumstances of the case, and consider, among other factors (a) whether an excuse for the delay exists; and, (b) whether the opposing party would suffer unfair surprise, disadvantage, or prejudice. *Estate of Ravetti v. Commissioner*, 64 T.C.M. (CCH) 1476, 1478 (1992).

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Respondent has a perfectly plausible excuse -- this is to a large extent a valuation case and it wasn't till the expert reports came in that respondent could do the math and decide he had a chance to assert a larger penalty for gross valuation misstatement. We also agree with him that petitioners would suffer no prejudice by the amendment -- there is no special defense to the gross valuation-misstatement penalty that petitioners cannot assert.

ORDERED that respondent's July 1, 2015 motion for leave to file amendment to answer to amended petition is granted, and the Clerk shall file the amendment to the answer that was lodged with the motion.

Since one of the aims of Tax Court is the uniform interpretation of the Code, the parties should also note that in at least one similar case the taxpayers have raised an issue under IRC § 6751(b) when respondent asserts this penalty. *See Graev v. Commissioner*, Dkt. No. 30638-08. The issue has been extensively briefed in *Graev*, and may also be lurking in this case as well. If it is, the Court invites the parties to develop any relevant facts at trial and address the issue in posttrial briefs.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
July 9, 2015